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60,137-207; 136-3032-U

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Eugene A. Helmsie
Serial Number: 10/774,339
Filed: February 6, 2004
Group Art Unit: 3751
Examiner: Le, Huyen D
Title: Configurable Modular Shower Surround Features

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Appellant submits its Brief subsequent to the filing of a Notice of Appeal on March 20, 2007. Fees in the amount of \$500.00 may be charged to Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds.

Real Party in Interest

The real party in interest in this application is American Shower and Bath Corporation, a division of Masco Corporation.

Related Appeals and Interferences

There are no related appeals or interferences.

Status of Claims

The application included claims 1-24. Claims 1-12, 16, 17, and 20 were previously cancelled. Claims 13-15, 18, 19, and 21-24 stand rejected and are pending in the application.

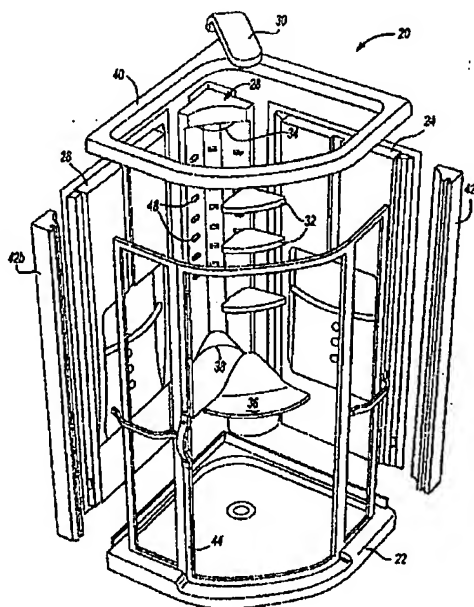
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Status of Amendments

All amendments have been entered.

Summary of Claimed Subject Matter

As shown below in Figure 1 from the application, the application is directed to a shower surround that can be assembled in a modular manner to provide multiple possible configurations in an uncomplicated assembly.

**Fig-1**

The application includes a single independent claim. Independent claim 19 is directed to a shower surround including a base portion 22, a first wall portion 24 and a second wall portion 26, and a corner portion 28 engaged with the base portion 22. The corner portion 28 includes multiple horizontal shelf slots 48 arranged in a vertical manner along the corner portion 28. The shelf slots 48 comprise at least partially arcuate openings in the corner portion 22 to support a corresponding multiple of shelves 32. [See page 2, paragraph 17, line 1-10; page 3, paragraph 18, lines 1-4; page 3, paragraph 20, lines 1-9.]

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60,137-207; 136-3032-U**Grounds of Rejection to be Reviewed on Appeal**

- I. Claims 14, 15, 19, 22, and 24 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 2,036,184 to Armstrong (hereafter "Armstrong").
- II. Claims 13-15, 18, 19, and 21-24 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 4,718,131 to Kitamura, et al. (hereafter "Kitamura") in view of U.S. Patent 4,886,236 to Randall (hereafter "Randall").

Argument**I. Rejection of Claims 14, 15, 19, 22, and 24 Under §102(b)****a. Claim 19**

Regarding independent claim 19, the Examiner interprets Armstrong as including a corner portion having a multiple of horizontal shelf slots that comprise at least partially arcuate openings, as claimed. The figures in Armstrong do not show enough detail to support a conclusion that the openings are at least partially arcuate as claimed, and the description of Armstrong does not describe the shape of the openings. Therefore, the rejection fails to establish *prima facie* anticipation and should be withdrawn.

b. Claim 22

Regarding claim 22, the Examiner interprets Armstrong as including partially arcuate openings having a uniform nominal depth extending into the corner portion, as claimed. The figures in Armstrong do not show enough detail to support this interpretation, and the description of Armstrong does not describe that the openings have a uniform nominal depth as claimed. For these reasons, the rejection fails to establish *prima facie* anticipation and should be withdrawn.

c. Claim 24

Regarding claim 24, the Examiner argues that the upper wall portion 8, the lower wall portion 9, and the arcuate rear wall portion 1 of Armstrong comprise a single continuous piece as

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claimed. However, Armstrong expressly describes that these elements are separate pieces (see page 1, lines 5-8, 25-27, and 40-42). The elements 8 and 9 are separate pieces that are secured to the bracket 1 using screws. Therefore, the Examiner's interpretation of these elements as being a single continuous piece as claimed is improper because the reference directly contradicts this interpretation. For these reasons, the rejection fails to establish *prima facie* anticipation and should be withdrawn.

d. Claims 14 and 15

The final rejection lists claims 14 and 15; however, the rejection fails to mention or consider these claims in the body of the rejection. The Armstrong reference does not disclose the claimed features. Therefore, claims 14 and 15 are allowable, and the rejection should be withdrawn.

II. Rejection of Claims 13-15, 18, 19, and 21-24 Under §103(a)

a. All Claims

The Examiner admits that Kitamura fails to disclose the claimed feature of partially arcuate openings in the shower surround corner portion for supporting shelves. The Examiner relies on Randall, which is not related specifically to shower surrounds, to provide the feature of partially arcuate openings. The Examiner argues that Randall teaches supporting a shelf using a bracket 25 having an arcuate opening 27, and that it would have been obvious to one of ordinary skill in the art to have substituted the brackets of Randall for the supporting pins of Kitamura to support the shelves because doing so would amount to a mere substitution of one functional equivalent for another that would work equally well.

Respectfully, the rejection is improperly based on an unjustified conclusory statement. The conclusion that the pins of Kitamura and the brackets of Randall are functional equivalents that would work equally well is unjustified, especially within the field of shower surrounds. As described for example in Appellant's Background of the application, a desirable feature of shower surrounds is that they are uncomplicated to assemble and compact (see also Kitamura, col. 1, lines

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5-15). In Kitamura, the pins 30 are integral with the supporting columns 27a and 27b as shown in Figure 13. Therefore, little or no assembly would be required other than placing the shelves onto the pins 30. In contrast, the brackets 25 of Randall and not for shower surrounds and involve a complex assembly that requires screws 31 to be assembled through the brackets 25 and wedges 39 to be inserted between the bracket and the shelf to secure the shelf within the bracket. Therefore, the bracket of Randall 25 is more complex and requires more components than the integral pins 30 of Kitamura. Thus, one of ordinary skill in the art, knowing that simple assembly of a shower surround is a desirable feature, would not substitute the bracket of Randall as an equivalent for the pins of Kitamura because the brackets would involve a more complex assembly. For this reason, the combination is improper and the rejection should be withdrawn.

Additionally, the brackets 25 of Kitamura also would require more space than the pins 30 of Kitamura. For example, as seen in Figure 3 of Randall (reproduced below), the shelf 13 is spaced apart from the wall 14 due to the thickness of the bracket 25. However, in Kitamura, the shelves 29b and 29c are permitted to be flush with the walls 28a and 28b while sitting on top of the pins 30. Therefore, if the brackets 25 were incorporated into the assembly of Kitamura, the shelves 29b, 29c would not be able to sit flush with the walls, which would require more space in shower surround to accommodate the shelves and brackets. Therefore, one of ordinary skill in the art, knowing of the desirability of compactness in shower surrounds, would not incorporate the brackets 25 of Randall into the shower surround of Kitamura because the brackets are less compact than the pins that are already used in Kitamura to support the shelves. For this reason, the proposed combination is improper and should be withdrawn.

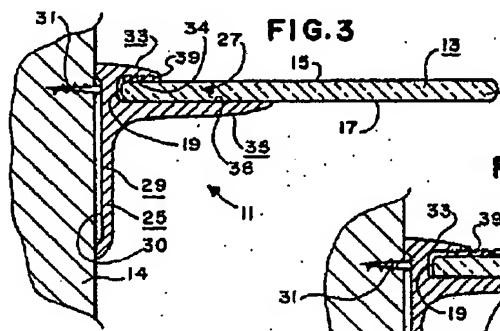


Figure 3 of U.S.
4,886,236 to
Randall

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Additionally, the proposed combination does not even disclose or suggest all of the claimed features. Claim 19 recites a "corner portion comprising a multiple of horizontal shelf slots arranged vertically along the length of said corner portion, wherein said horizontal shelf slots comprise at least partially arcuate openings in said corner portion." Thus, in Appellant's claim, the *corner portion* includes the shelf slots and the shelf slots are in the corner portion. Thus, even if the brackets of Randall were incorporated into the assembly of Kitamura, there would still be no slots within the corner portion because the slots would be within the bracket, not the corner portion. For this additional reason, the rejection is improper and should be withdrawn.

b. Claim 18

Additionally, claim 18 is independently allowable. The claim recites that the horizontal shelf slots include "blind openings that extend into said corner portion." As disclosed for example in Appellant's Background of the application, one desired feature of a shower surround is that it is fully enclosed and waterproof to prevent the escape of water into the wall cavity. Thus, using a blind opening as claimed would have a benefit of containing water within the shower surround to prevent it from escaping into the wall cavity. In contrast, if the brackets of Randall, which is not specifically directed to shower shelving, were incorporated into the shower surround of Kitamura as proposed, the screws 31 used to secure the brackets to the wall would penetrate through the wall and provide a path for water leakage into the wall cavity. Thus, one of ordinary skill in the art would not be motivated to make the proposed combination. For this additional reason, claim 18 is allowable and the rejection should be withdrawn.

c. Claim 24

Additionally, claim 24 is independently allowable. The claim recites that "said corner portion, said upper wall portion, said lower wall portion, and said arcuate rear wall portion comprise a single, continuous piece." Claim 24 appears to include several typos in that "said upper wall portion" should be "said first wall portion" and "said lower wall portion" should be "said second wall portion." Assuming these changes, as the Examiner appears to have recognized in making the rejection, the proposed combination fails to disclose or suggest a single, continuous


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piece as claimed. The Examiner argues that the corner portion R₁, the upper wall portion 33, the lower wall portion 35, and the arcuate rear wall portion 29 would comprise a single continuous piece after being assembled together. However, the Examiner's interpretation is contrary to the ordinary understanding of the word "continuous." For example, "continuous" is commonly understood to mean extending without a break or interruption (see <http://dictionary.reference.com/browse/continuous>). Once assembled together, the pieces would not be continuous because there would be a discontinuity or interruption at the interface between the bracket 25 and the corner portion R₁. For this additional reason, claim 24 is independently allowable and the rejection should be withdrawn.

CLOSING

For the reasons set forth above, the final rejection of claims 13-15, 18, 19, and 21-24 is improper and should be reversed.

Respectfully submitted,



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Dated: May 21, 2007


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CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States patent and Trademark Office, fax number (571) 273-8300, on May 21, 2007.


Laura Combs

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CLAIMS APPENDIX

13. The shower surround as recited in claim 19, wherein said multiple of horizontal shelf slots are segmented.

14. The shower surround as recited in claim 19, further comprising a shelf removable engaged with any of said multiple of horizontal shelf slots.

15. The shower surround as recited in claim 14, wherein interfaces between said slots and said removable shelves provide a "snap-in" interface

18. The shower surround as recited in claim 19, wherein said horizontal shelf slots comprise blind openings that extend into said corner portion.

19. A shower surround comprising:

a base portion;

a first wall portion;

a second wall portion; and

a corner portion engaged with said base portion, said first wall portion and said second wall portion, said corner portion comprising a multiple of horizontal shelf slots arranged vertically along a length of said corner portion, wherein said horizontal shelf slots comprise at least partially arcuate openings in said corner portion to support a corresponding multiple of shelves.

21. The shower surround as recited in claim 19, wherein at least one of said at least partially arcuate openings is defined by an upper wall portion, a lower wall portion, and an arcuate rear wall portion of said corner portion.

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22. The shower surround as recited in claim 21, wherein said at least one of said at least partially arcuate openings includes a uniform nominal depth extending into said corner portion.

23. The shower surround as recited in claim 19, wherein each one of said at least partially arcuate openings is adapted to support one of said corresponding multiple of shelves.

24. The shower surround as recited in claim 19, wherein said corner portion, said upper wall portion, said lower wall portion, and said arcuate rear wall portion comprise a single, continuous piece.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.